



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB5382

Introduced 2/5/2010, by Rep. Elaine Nekritz

SYNOPSIS AS INTRODUCED:

New Act
815 ILCS 505/2Z

from Ch. 121 1/2, par. 262Z

Creates the Prescription Record Privacy Act. Provides for the protection of the confidentiality of prescription records identifying a patient or a doctor or other health care professional licensed to prescribe medications by prohibiting the use of such information for marketing purposes. Provides that any person who knowingly violates the Prescription Record Privacy Act commits an unlawful practice within the meaning of the Act. Effective immediately.

LRB096 16738 ASK 32030 b

FISCAL NOTE ACT
MAY APPLY

1 AN ACT concerning medical privacy.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the
5 Prescription Record Privacy Act.

6 Section 5. Purpose. It is the intent of the General
7 Assembly to safeguard the confidentiality of prescribing
8 information, protect the integrity of the doctor-patient
9 relationship, maintain the integrity and public trust in the
10 medical profession, combat vexatious and harassing sales
11 practices, restrain undue influence exerted by pharmaceutical
12 industry marketing representatives over prescribing decisions
13 and further the State interest in improving the quality and
14 lowering the cost of health care. The General Assembly intends
15 to regulate the monitoring of prescribing practices only for
16 commercial marketing purposes by companies selling prescribed
17 products. The intent is not to regulate monitoring for other
18 uses, such as quality control, research unrelated to marketing,
19 or use by governments or other entities not in the business of
20 selling health care products.

21 Section 10. Definitions. For the purposes of this Act:

22 "Bona fide clinical trial" means any research project that

1 prospectively assigns human subjects to intervention and
2 comparison groups to study the cause and effect relationship
3 between a medical intervention and a health outcome, has
4 received approval from an appropriate Institutional Review
5 Board, and has been registered at the website
6 "ClinicalTrials.Gov" prior to commencement.

7 "Department" means the Illinois Department of Public
8 Health.

9 "Individual identifying information" means information
10 that directly or indirectly identifies a prescriber or a
11 patient in the State, where the information is derived from or
12 relates to a prescription for any prescribed product.

13 "Marketing" means any activity by a company making or
14 selling prescribed products, or such company's agent, intended
15 to influence prescribing or purchasing choices of its products,
16 including, but not limited to:

17 (1) advertising, publicizing, promoting or sharing
18 information about a product;

19 (2) identifying individuals to receive a message
20 promoting use of a particular product, including but not
21 limited to an advertisement, brochure, or contact by a
22 sales representative;

23 (3) planning the substance of a sales representative
24 visit or communication or the substance of an advertisement
25 or other promotional message or document;

26 (4) evaluating or compensating sales representatives;

1 (5) identifying individuals to receive any form of
2 gift, product sample, consultancy, or any other item,
3 service, compensation or employment of value; or

4 (6) advertising or promoting prescribed products
5 directly to patients.

6 (d) "Person" means a business, individual, corporation,
7 union, association, firm, partnership, committee, or other
8 organization or group of persons.

9 (e) "Pharmacy" means any individual or entity licensed
10 under State law to dispense prescribed products.

11 (f) "Prescribed product" includes a biological product as
12 defined in Section 351 of the Public Health Service Act, 42
13 U.S.C. §262 and a device or a drug as defined in Section 201 of
14 the Federal Food, Drug and Cosmetic Act, 21 U.S.C. §321.

15 (g) "Regulated record" means information or documentation
16 from a prescription written by a prescriber doing business in
17 this State or a prescription dispensed in the State.

18 (h) "State health care program" means a program for which
19 the State purchases prescribed products, including, but not
20 limited to, a State pharmaceutical assistance program, or a
21 program for State employees and their dependents, individuals
22 under the supervision of the Department of Corrections, or
23 State retirees and their dependants, with the exception of the
24 State medical assistance program (Medicaid).

25 Section 15. Privacy provisions.

1 (a) No person shall knowingly disclose or use regulated
2 records in the State that include prescription information
3 containing individual identifying information for marketing a
4 prescribed product.

5 (b) A regulated record containing individual identifying
6 information may be transferred to another entity, including
7 another branch or subsidiary of the same firm, only if the
8 sender has received satisfactory assurance from the recipient
9 that he or she will safeguard the records from being disclosed
10 or used in the State for a marketing purpose prohibited under
11 this Section.

12 (c) Regulated records containing individual identifying
13 information may be disclosed, sold, transferred, exchanged, or
14 used for non-marketing purposes.

15 (d) This Section does not prohibit conduct involving the
16 collection, use, transfer, or sale of regulated records for
17 marketing purposes if:

18 (1) the data is aggregated;

19 (2) the data does not contain individually identifying
20 information; and

21 (3) there is no reasonable basis to believe that the
22 data can be used to obtain individually identifying
23 information.

24 (e) This Section does not prevent any person from
25 disclosing regulated records to the identified individual as
26 long as the information does not include protected information

1 pertaining to any other person.

2 (f) The Department may adopt rules as necessary to
3 implement this Act.

4 Section 20. Enforcement.

5 (a) Any person who knowingly fails to comply with the
6 requirements of this Act or rules adopted pursuant to this Act
7 by using or disclosing regulated records in a manner not
8 authorized by this Act or its rules shall be subject to an
9 administrative penalty of at least \$10,000 per violation and
10 not more than \$50,000 per violation, as assessed by the
11 Department. Each disclosure of a regulated record shall
12 constitute a violation. The office of the State Attorney
13 General shall take necessary action to enforce payment of
14 penalties assessed under this Section. Minimum statutory
15 penalties shall be set at \$10,000 per violation.

16 (b) In addition to any other remedy provided by law, a
17 violation of this Act shall be an unfair or deceptive act in
18 trade or commerce and an unfair method of competition and may
19 be enforced through the Consumer Fraud and Deceptive Business
20 Practices Act.

21 Section 25. Severability. If any provision of this Act or
22 its application to any person or circumstance is held invalid,
23 the remainder of the Act or the application of the provision to
24 other persons or circumstances is not affected.

1 Section 30. No extra-territorial effect. Nothing in this
2 bill shall be interpreted to regulate conduct that takes place
3 entirely outside of the State.

4 Section 35. No effect on truthful speech to doctors or
5 patients. Nothing in this Act shall be interpreted to regulate
6 the content, time, place or manner of any discussion between a
7 prescriber and his or her patient, or a prescriber and any
8 person representing a prescription drug manufacturer.

9 Section 40. The Consumer Fraud and Deceptive Business
10 Practices Act is amended by changing Section 2Z as follows:

11 (815 ILCS 505/2Z) (from Ch. 121 1/2, par. 262Z)

12 Sec. 2Z. Violations of other Acts. Any person who knowingly
13 violates the Automotive Repair Act, the Automotive Collision
14 Repair Act, the Home Repair and Remodeling Act, the Dance
15 Studio Act, the Physical Fitness Services Act, the Hearing
16 Instrument Consumer Protection Act, the Illinois Union Label
17 Act, the Job Referral and Job Listing Services Consumer
18 Protection Act, the Travel Promotion Consumer Protection Act,
19 the Credit Services Organizations Act, the Automatic Telephone
20 Dialers Act, the Pay-Per-Call Services Consumer Protection
21 Act, the Telephone Solicitations Act, the Illinois Funeral or
22 Burial Funds Act, the Cemetery Care Act, the Safe and Hygienic

1 Bed Act, the Pre-Need Cemetery Sales Act, the High Risk Home
2 Loan Act, the Payday Loan Reform Act, the Mortgage Rescue Fraud
3 Act, subsection (a) or (b) of Section 3-10 of the Cigarette Tax
4 Act, ~~the Payday Loan Reform Act,~~ subsection (a) or (b) of
5 Section 3-10 of the Cigarette Use Tax Act, the Electronic Mail
6 Act, the Internet Caller Identification Act, paragraph (6) of
7 subsection (k) of Section 6-305 of the Illinois Vehicle Code,
8 Section 18d-115, 18d-120, 18d-125, 18d-135, or 18d-150 of the
9 Illinois Vehicle Code, Article 3 of the Residential Real
10 Property Disclosure Act, the Automatic Contract Renewal Act, ~~or~~
11 the Personal Information Protection Act, or the Prescription
12 Record Privacy Act commits an unlawful practice within the
13 meaning of this Act.

14 (Source: P.A. 94-13, eff. 12-6-05; 94-36, eff. 1-1-06; 94-280,
15 eff. 1-1-06; 94-292, eff. 1-1-06; 94-822, eff. 1-1-07; 95-413,
16 eff. 1-1-08; 95-562, eff. 7-1-08; 95-876, eff. 8-21-08; revised
17 11-4-09.)

18 Section 99. Effective date. This Act takes effect upon
19 becoming law.